

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KIMBERLY-CLARK CORP., et al.,

Plaintiff,

v.

Case No. 05-C-985

TYCO HEALTHCARE RETAIL GROUP,

Defendant.

ORDER

K-C has filed a Rule 7.4 motion to compel discovery on the grounds that Tyco is withholding, or may withhold, documents on privilege grounds. K-C asserts that Tyco has waived the privilege because it has asserted the advice of counsel defense. The motion notes, in a footnote, that Tyco has not yet explicitly refused to turn over most of the information sought; but in light of the present dispute over the scope of Tyco's privilege waiver the matter would benefit from this court's ruling.

The response indicates that Tyco itself has just recently received most of the information K-C now seeks and that Tyco was itself unaware that any "dispute" existed. It seems clear that a dispute may be on the horizon as to the scope of privilege, and K-C may be correct that it is "highly likely" that Tyco will withhold some documents. Yet it does not appear that the dispute is ripe at the moment. In fact, the motion to compel does not even indicate that the parties attempted to work out the "dispute" in good faith, which is a violation of Civil L. R. 7.4(b) and 37.1. *See, e.g., Lucas v. Pyramax Bank, FSB*, 2006 WL 897803, *1 (E. D. Wis. 2006) ("Because Lucas did not provide

the written statement contemplated by Civil Local Rule 37.1, court action at this time would be premature.”) Accordingly, the motion will be denied as premature.

SO ORDERED this 29th day of November, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge